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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 WILLIAM JAMES MATHEW
11 WALLACE II,

12 Plaintiff,

13 v.

14 FRANK LONGANO,

15 Defendants.

CASE NO. 3:19-cv-05330-RJB-JRC

ORDER

16 The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United
17 States Magistrate Judge J. Richard Creatura. Presently pending before the Court are several
18 motions filed by both parties: (1) plaintiff's motion for additional time in seeking discovery (Dkt.
19 73); (2) defendants' motion for summary judgment (Dkt. 74); (3) plaintiff's motion for extension
20 of time to complete discovery (Dkt. 84); (4) plaintiff's motion for summary judgment (Dkt. 85);
21 and (5) plaintiff's fourth motion to appoint counsel (Dkt. 90).

22 After a review of the motions and the relevant record, plaintiff's requests for an extension
23 of discovery are denied (Dkts. 73, 84). Nevertheless, the Court grants plaintiff an extension to
24 file a response to defendants' motion for summary judgment on or before April 20, 2020.

1 Defendants may file a supplemental reply on or before May 1, 2020. Defendant's motion for
2 summary judgment (Dkt. 74) and plaintiff's cross-motion for summary judgment (Dkt. 85) are
3 re-noted for May 1, 2020. The Court denies plaintiff's fourth motion to appoint counsel (Dkt. 90)
4 without prejudice.

5 **A. Motions for Extension of Discovery (Dkts. 73, 84)**

6 Plaintiff moves for the extension of discovery to May 7, 2020 to prepare a response to
7 defendants' motion for summary judgment. *See* Dkts. 73, 84. In his reply, plaintiff specifically
8 states his own motion for summary judgment (Dkt. 85) was not intended to be a response to
9 defendants' motion for summary judgment, but rather he seeks "judgment as a matter of law in
10 his own favor." Dkt. 89 at 12. Defendants oppose both motions for the extension of discovery.
11 Dkt. 86.

12 Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, "the court shall grant
13 summary judgment if the movant shows that there is no genuine dispute as to any material fact
14 and the movant is entitled to judgment as a matter of law." However, Federal Rule of Civil
15 Procedure 56(d) "provides a device for litigants to avoid summary judgment when they have not
16 had sufficient time to develop affirmative evidence." *United States v. Kitsap Physicians Serv.*,
17 314 F.3d 995, 1000 (9th Cir. 2002). Under Rule 56(d), if the nonmoving party "shows by
18 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its
19 opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain
20 affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Fed. R.
21 Civ. P. 56(d). In order to grant relief under Rule 56(d), the party opposing summary judgment
22 must make " '(a) a timely application which (b) specifically identifies (c) relevant information,
23 (d) where there is some basis for believing that the information sought actually exists.' " *Emp'rs*
24 *Teamsters Local Nos. 175 & 505 Pension Trust Fund v. Clorox*, 353 F.3d 1125, 1129 (9th Cir.

1 2004) (quoting *VISA Int'l Serv. Ass'n v. Bankcard Holders of Am.*, 784 F.2d 1472, 1475 (9th Cir.
2 1986)).

3 Plaintiff has failed to meet requirements under Rule 56(d). Plaintiff has failed to provide
4 any specific reasons that demonstrates why he was unable to complete discovery within the
5 original deadline. Discovery in this case closed on December 12, 2019. Dkt. 46. Plaintiff claims
6 that his transfer to a different facility impeded his ability to complete discovery. Dkt 46.
7 However, he was not transferred until January 2020. Dkt. 87. Plaintiff did not file his motions
8 until January 2020, almost a month after discovery had closed. Dkts. 73, 84. In addition, plaintiff
9 has not demonstrated how additional discovery would allow him to “present facts essential to
10 justify [his] opposition.” Fed. R. Civ. P. 56(d); Dkts. 73, 84.

11 Based on the foregoing, the undersigned concludes plaintiff has not met the requirements
12 of Rule 56(d) to permit further discovery prior to ruling on the summary judgment motions.
13 Nevertheless, in light of plaintiff’s January 2020 transfer, the Court finds an extension to respond
14 to defendants’ motion for summary judgment is appropriate to ensure that plaintiff has adequate
15 time to receive his legal materials. Plaintiff’s response to defendants’ motion for summary
16 judgment is now due on or before April 20, 2020. Defendants’ supplemental reply, if any, is now
17 due on or before May 1, 2020. The Clerk is directed to re-note defendants’ motion for summary
18 judgment (Dkt. 74) and plaintiff’s cross-motion for summary judgment (Dkt. 85) for May 1,
19 2020.

20 **B. Fourth Motion to Appoint Counsel (Dkt. 90)**

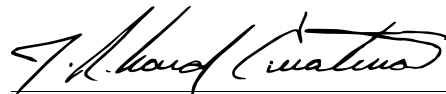
21 Plaintiff seeks the appointment of counsel for a fourth time in this case. Dkt. 90.

22 The Court previously denied plaintiff’s first, second, and third, motions for appointment
23 of counsel because he failed to show any exceptional circumstances. Dkts. 33, 36, 54, 58, 61, 66.
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1 Plaintiff's fourth motion does not present the Court with any reason to change its prior
2 conclusions that no exceptional circumstances exist which warrant the appointment of counsel in
3 this case. Plaintiff's renewed request also fails to demonstrate that he is likely to succeed on the
4 merits of his case. Plaintiff has demonstrated an ability to articulate the factual basis of his
5 claims in a fashion understandable to the Court.

6 Therefore, the Court finds that plaintiff has failed to show that the appointment of
7 counsel is appropriate at this time. Accordingly, plaintiff's fourth motion to appoint counsel
8 (Dkt. 90) is denied without prejudice. Plaintiff is advised any renewed motions to appoint
9 counsel will not be considered by the Court absent a change in circumstances demonstrating
10 exceptional circumstances exist which warrant the appointment of counsel.

11 Dated this 9th day of March, 2020.

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15 J. Richard Creatura
16 United States Magistrate Judge
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